

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7334) DISMISSAL AND
6 John McCann for Congress) CASE CLOSURE UNDER THE
7 and Ralph Contini, as Treasurer) ENFORCEMENT PRIORITY
8 Mike Strada for Sheriff) SYSTEM
9 and Kim Strada, as Treasurer)
10)
11)

12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
14 basis to allocate its resources and decide which matters to pursue. These criteria include, without
15 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
16 into account both the type of activity and the amount in violation; (2) the apparent impact the
17 alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised
18 in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of
19 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that
20 pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its
21 prosecutorial discretion to dismiss cases under certain circumstances and, where appropriate, to find
22 no reason to believe that a violation occurred.

23 The Office of General Counsel has scored MUR 7334 as a low-rated matter and has
24 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
25 reasons set forth below, we recommend that the Commission dismiss all of the allegations.²

¹ The EPS rating information is as follows:
Filed: April 30, 2018.

Complaint Filed: February 28, 2018. Response

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 The Complaint alleges that Mike Strada for Sheriff and Kim Strada, in her official capacity
2 as treasurer (the “Strada Committee”) made a prohibited in-kind contribution, which John McCann
3 for Congress and Ralph Contini, in his official capacity as treasurer (the “Committee”),³ accepted.
4 Specifically, the Complaint alleges that the Strada Committee, a state committee, paid for a
5 February 21, 2018, “Meet & Greet” fundraiser for McCann, and contends that the Strada Committee
6 may have paid for it with funds not subject to the limitations and prohibitions of the Act.⁴ The
7 Complaint included a copy of an invitation flyer for the fundraiser that includes the disclaimer “Paid
8 for by Michael Strada for Sheriff.”⁵ The Committee responds that it paid for the event and reported
9 the disbursement on its 2018 April Quarterly Report.⁶

10 Candidates for federal office are prohibited from receiving funds in connection with an
11 election for federal office unless the funds are subject to the limitations, prohibitions, and reporting
12 requirements of the Act.⁷ Candidates for state or local office, or agents of such candidates, are
13 prohibited from spending any funds for a public communication that refers to a clearly identified
14 candidate for federal office, and that promotes or supports any candidate for that federal office,
15 unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁸
16 Additionally, political committees are required to file reports of receipts and disbursements with the
17 Commission, including itemizing contributions to the reporting committee from persons whose

³ McCann is a 2018 candidate for the U.S. House of Representatives in New Jersey’s Fifth District.

⁴ Compl. at 1 (February 28, 2018). The Complaint also implies, but does not directly allege, that the event in question may have been an excessive in-kind contribution to the Committee. *Id.*

⁵ *Id.*, Attach. There is no information that the Committee approved the flyer. Also, the available information does not indicate how much the flyer cost or how many copies were distributed.

⁶ Resp. at 1 (April 30, 2018). The Committee’s disclosure report shows a disbursement dated March 2, 2018, in the amount of \$3,935.03, payable to Island Services III, LLC d/b/a Mohawk House. See John McCann for Congress 2018 April Quarterly Report at 20.

⁷ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

⁸ See 52 U.S.C. § 30125(f)(1); see also 11 C.F.R. § 300.71.

1 contribution or contributions have an aggregate amount or value in excess of \$200 within the
2 calendar year.⁹ Itemized in-kind contributions must be reported as both itemized contributions and
3 itemized expenditures on the same report.¹⁰ The Act and Commission regulations define
4 “contribution” as any “gift ... or anything of value made by any person for the purpose of
5 influencing any election for Federal office.”¹¹ “Anything of value” includes all in-kind
6 contributions.¹² Whenever any person makes a disbursement for a public communication that
7 expressly advocates the election or defeat of a clearly identified candidate, he or she must include a
8 disclaimer.¹³ Public communications authorized by a candidate, an authorized committee of a
9 candidate, or an agent of either but paid for by another person, must clearly state that the
10 communications were paid for by such person but authorized by the political committee.¹⁴ If the
11 communication is not authorized by a candidate, an authorized political committee of a candidate,
12 or its agents, the communication shall clearly state the name and permanent street address,
13 telephone number, or World Wide Web address of the person who paid for the communication and
14 state that the communication is not authorized by any candidate or candidate's committee.¹⁵

15 The Committee’s Response and its 2018 April Quarterly Report indicate the Committee paid
16 some costs related to the fundraiser, and the face of the invitation shows that the Strada Committee

⁹ 52 U.S.C. § 30104(a), (b)(2)(A), (b)(3)(A); 11 C.F.R. § 104.3(a)(3)(i)(A), (a)(3)(iii), (a)(4)(i), (ii).

¹⁰ See 11 C.F.R. § 104.13(a)(1), (2).

¹¹ 52 U.S.C. § 30101(8)(A)(i); see also 11 C.F.R. § 100.52(a).

¹² 11 C.F.R. § 100.52(d)(1).

¹³ 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(2), (b). See also 11 C.F.R. § 110.22. Also, when a person that is not a political committee makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year, they are required to file a report on FEC Form 5. 11 C.F.R. § 109.10(b). However, because there is no information regarding the cost of the flyer, we make no recommendation as to this issue.

¹⁴ 52 U.S.C. § 30120(a)(2); see also 11 C.F.R. § 110.11(b)(2).

¹⁵ 52 U.S.C. § 30120(a)(3); see also 11 C.F.R. § 110.11(b)(3).

1 paid for the flyer. Also, the disclaimer on the flyer does not contain all required information.
2 However, in furtherance of the Commission's priorities relative to other matters pending on the
3 Enforcement docket and in light of the modest amounts likely at issue, we recommend that the
4 Commission exercise its prosecutorial discretion and dismiss all of the allegations.¹⁶

5 **RECOMMENDATIONS**

- 6
7 1. Dismiss the allegation that John McCann for Congress and Ralph Contini, in his official
8 capacity as treasurer, violated 52 U.S.C. §§ 30125(e)(1)(A), 30104(a) and (b)(2)(A), or
9 11 C.F.R. §§ 104.3(a)(3)(i)(A), 104.13(a)(1) and (2), or 300.61; pursuant to the
10 Commission's prosecutorial discretion under *Heckler v. Chaney*;
11
12 2. Dismiss the allegations that Mike Strada for Sheriff and Kim Strada, in her official
13 capacity as treasurer, violated 52 U.S.C. §§ 30120(a)(2) or (3), or 30125(f)(1); or 11
14 C.F.R. §§ 110.11(b)(2) or 300.71; pursuant to the Commission's prosecutorial discretion
15 under *Heckler v. Chaney*;
16
17 3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
18
19 4. Close the file as to all Respondents.
20

21 Lisa J. Stevenson
22 Acting General Counsel
23

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25 Kathleen M. Guith
26 Associate General Counsel
27

28 6.13.18
29 Date

30 BY: Stephen Gura
31 Stephen Gura
32 Deputy Associate General Counsel

33 Jeff S. Jordan
34 Jeff S. Jordan
35 Assistant General Counsel

36 Donald E. Campbell
37 Donald E. Campbell
38 Attorney
39

40 Attachment:
41 Factual and Legal Analysis

¹⁶ See *Heckler*, 470 U.S. at 821.

1 that includes the disclaimer “Paid for by Michael Strada for Sheriff.”³ The Committee responds
2 that it paid for the event and reported the disbursement on its 2018 April Quarterly Report.⁴

3 **B. Legal Analysis**

4 Candidates for federal office are prohibited from receiving funds in connection with an
5 election for federal office unless the funds are subject to the limitations, prohibitions, and
6 reporting requirements of the Act.⁵ Candidates for state or local office, or agents of such
7 candidates, are prohibited from spending any funds for a public communication that refers to a
8 clearly identified candidate for federal office, and that promotes or supports any candidate for
9 that federal office, unless the funds are subject to the limitations, prohibitions, and reporting
10 requirements of the Act.⁶ Additionally, political committees are required to file reports of
11 receipts and disbursements with the Commission, including itemizing contributions to the
12 reporting committee from persons whose contribution or contributions have an aggregate amount
13 or value in excess of \$200 within the calendar year.⁷ Itemized in-kind contributions must be
14 reported as both itemized contributions and itemized expenditures on the same report.⁸ The Act
15 and Commission regulations define “contribution” as any “gift ... or anything of value made by
16 any person for the purpose of influencing any election for Federal office.”⁹ “Anything of value”

³ *Id.*, Attach. There is no information that the Committee approved the flyer. Also, the available information does not indicate how much the flyer cost or how many copies were distributed.

⁴ Resp. at 1 (April 30, 2018). The Committee’s disclosure report shows a disbursement dated March 2, 2018, in the amount of \$3,935.03, payable to Island Services III, LLC d/b/a Mohawk House. See John McCann for Congress 2018 April Quarterly Report at 20.

⁵ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

⁶ See 52 U.S.C. § 30125(f)(1); see also 11 C.F.R. § 300.71.

⁷ 52 U.S.C. § 30104(a), (b)(2)(A), (b)(3)(A); 11 C.F.R. § 104.3(a)(3)(i)(A), (a)(3)(iii), (a)(4)(i), (ii).

⁸ See 11 C.F.R. § 104.13(a)(1), (2).

⁹ 52 U.S.C. § 30101(8)(A)(i); see also 11 C.F.R. § 100.52(a).

1 includes all in-kind contributions.¹⁰ Whenever any person makes a disbursement for a public
2 communication that expressly advocates the election or defeat of a clearly identified candidate,
3 he or she must include a disclaimer.¹¹ Public communications authorized by a candidate, an
4 authorized committee of a candidate, or an agent of either but paid for by another person, must
5 clearly state that the communications were paid for by such person but authorized by the political
6 committee.¹² If the communication is not authorized by a candidate, an authorized political
7 committee of a candidate, or its agents, the communication shall clearly state the name and
8 permanent street address, telephone number, or World Wide Web address of the person who paid
9 for the communication and state that the communication is not authorized by any candidate or
10 candidate's committee.¹³

11 The Committee's Response and its 2018 April Quarterly Report indicate the Committee
12 paid some costs related to the fundraiser, and the face of the invitation shows that the Strada
13 Committee paid for the flyer. Also, the disclaimer on the flyer does not contain all required
14 information. However, in furtherance of the Commission's priorities relative to other matters
15 pending on the Enforcement docket and in light of the modest amounts likely at issue, the
16 Commission dismisses all the allegations consistent with the Commission's prosecutorial
17 discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler*
18 *v. Chaney*, 470 U.S. 821, 831-32 (1985).

¹⁰ 11 C.F.R. § 100.52(d)(1).

¹¹ 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(2), (b). *See also* 11 C.F.R. § 110.22. Also, when a person that is not a political committee makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year, they are required to file a report on FEC Form 5. 11 C.F.R. § 109.10(b). However, because there is no information regarding the cost of the flyer, the Commission makes no determination as to this issue.

¹² 52 U.S.C. § 30120(a)(2); *see also* 11 C.F.R. § 110.11(b)(2).

¹³ 52 U.S.C. § 30120(a)(3); *see also* 11 C.F.R. § 110.11(b)(3).